UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

INGLESIDE PRESBYTERIAN RETIREMENT
COMMUNITY d/b/a INGLESIDE AT ROCK CREEK

Employer

and Case 5-RC-15929

1199 SEIU, UNITED HEALTHCARE WORKERS EAST

Petitioner

REPORT ON OBJECTIONS

Pursuant to a Stipulated Election Agreement[1] which I approved on December 14, 2005, a secret ballot election was conducted under my supervision on January 12, 2006, with the following results:

Approximate number of eligible voters	167
Void ballots	2
Votes cast for Petitioner	85
Votes cast against participating labor organizations	56
Valid votes counted	141
Challenged ballots	1
Valid votes counted plus challenged ballots	142

The challenge is not sufficient in number to affect the results of the election.

A majority of the valid votes counted plus challenged ballot has been cast for 1199 SEIU, United Healthcare Workers East.

[1] The unit is: All full-time and regular part-time service and maintenance employees including CNAs, housekeeping and laundry employees, dietary employees, receptionists, drivers, scheduling coordinators, medical records coordinator, office clerical employees, and maintenance employees employed by the Employer at its Washington, DC facility; but excluding professional employees, confidential employees, managerial employees, guards and supervisors (including LPN Charge Nurses) as defined in the Act. The eligibility period is the payroll period ending Saturday, December 3, 2005.

On January 18, 2006, the Employer filed timely objections to conduct affecting the results of the election.[2]

THE OBJECTIONS

The sole piece of evidence submitted by the Employer in support of its five objections is a leaflet that shall be referred to in this Report as the "petition," a copy of which is appended to this Report. Based upon its examination of the petition, the Employer argues the employee signatures could not have been directly placed on the document as they appear (no signature lines touching, etc.). The Employer concludes the document must have been "manufactured" and the names and signatures of the employees were taken out of context and manipulated to create a false showing of support for Petitioner. The Employer claims the "petition" was found by Reverend David Jones, on the Employer's premises, on January 12, 2006 during the period between two polling sessions.

OBJECTION 1:

> Agents, employees and representatives of the Petitioner, SEIU/1199, threatened employees and made other attempts to coerce employee sentiment in a manner which intimidated eligible voters and destroyed the laboratory conditions necessary for a fair and fee election.

OBJECTION 2:

> Employee supporters of the Petitioner, SEIU/1199, and third parties threatened employees and made other attempts to coerce employee sentiment in a manner which intimidated eligible voters and destroyed the laboratory conditions necessary for a fair and fee election.

Besides the copy of the "petition," the Employer provided no other evidence (such as witness statements), including evidence to substantiate its claim that employees were

[2] The petition was filed on December 14, 2005. The undersigned will consider on their merits only that alleged conduct and interference that occurred during the critical period, which begins on and includes the date of the filing of the petition and extends through the election. Goodyear Tire and Rubber Company, 138 NLRB 453 (1962).

threatened or coerced or intimidated. In the absence of such evidence, the Employer apparently argues the "petition" is, by itself, per se coercive.

Petitioner admits to having prepared the "petition," and to causing its distribution among the Employer's employees, commencing January 11, 2006. Petitioner denies the conduct alleged is objectionable.

The Employer has failed to establish the "petition" was in any way coercive, or that any employees claim to have been coerced by it. Such petitions, on the other hand, have been found not per se coercive. See *NLRB v. Media General Operations, Inc.*, 360 F.3d 434, 441 (4th Cir. 2004); *Maremont Corp. v. NLRB*, 177 F.3d 573, 578 (6th Cir. 1999). Furthermore, the "petition" itself, containing approximately 90 signatures, serves to demonstrate its noncoercive effect, such that employees were not compelled to vote "yes" in the election even though their support for the Union was registered on the "petition." An objecting party is entitled to a hearing only when it has supplied prima facie evidence raising "substantial and material issues" that would warrant setting aside the election. *NLRB v. Tio Pepe, Inc.*, 629 F2d 964, 968 (4th Cir. 1980). Evidence must be of the kind "which would be admissible into evidence at a hearing and subjected to evaluation as to its weight and probative force." *Grants Furniture Plaza, Inc.*, 213 NLRB 410, 410 (1974). The burden placed on the objecting party for the submission of its supporting evidence is a heavy one, as the objecting party must provide specific supporting evidence. *NLRB v. Claxton Mfg., Co.*, 613 F.2d 1364, 1366 (5th Cir. 1980). Conclusory allegations and mere accusations are not sufficient. In the absence of any such evidence submitted by the Employer, I recommend overruling Objections 1 and 2.[3]

[3] Compare *Media General Operations, Inc.*, supra. at 442, in which a hearing was also denied, notwithstanding the submission of two employee statements with the objections. The employee statements failed to establish any objectionable conduct may have occurred because the employees could only report their subjective reactions to conduct that, under an objective analysis, would not have interfered with the free choice of a reasonable employee. In the instant case, the Employer has not submitted any witness statements or other evidence to show anyone was coerced.

OBJECTION 3:

> Agents, employees and representatives of the Petitioner, SEIU/1199, made material factual misrepresentations to employees eligible to vote in the election, including the dissemination of materials displaying inaccurate employee voting sentiments.

Relying on its visual examination of the petition (and specifically the fact that no signatures overlap), the Employer asserts the "petition" must have been fabricated, with names and signatures of employees appearing thereon having been taken out of context and manipulated, for the purpose of creating a false showing of support for Petitioner. The Employer submitted no evidence to support its claim that any employee's sentiments were misrepresented by the inclusion of his or her name/signature on the "petition," or that the document as a whole creates a false showing of support for Petitioner.

Petitioner denies the conduct alleged is objectionable. In support of its position on this objection, as well as Objection 4, Petitioner submitted a statement from Vanessa Bliss, an organizer employed by Petitioner, attesting to the following. Ms. Bliss prepared a document, of which each page was titled "PUBLIC PETITION," and contained a preamble stating:

> WE, THE EMPLOYEES OF INGLESIDE NURSING HOME, ARE
> VOTING "YES" FOR 1199
> SO THAT WE CAN HAVE A REAL VOICE IN THE DECISIONS
> THAT AFFECT OUR FUTURE AND OUR RESIDENT' FUTURE.

Ms. Bliss caused the "PUBLIC PETITION" to be circulated among the Employer's employees. Employees signed and printed their names on 23 pages of this document. Ms. Bliss then reproduced the names and signatures onto the single-page leaflet that is the subject of the Employer's objections. Petitioner points out that the sentiment expressed on the attached "petition" is identical to the one on the document signed by the employees.

Absent any evidence that the "petition" has taken any employee's name and signature out of context, or has misrepresented any employee's sentiments, I find the Employer has failed to make the prima facie showing necessary to warrant a hearing on this objection. Nor does it

appear that the petition makes a false claim of employee support, as evidenced by the 85 "yes" votes actually cast for the Petitioner in the election, a number proximate to the 90 signatures that appear on the "petition." Bearing Petitioner's name, address and phone number, the source of the "petition" and its nature as union propaganda is clear, and it is free of any material misrepresentation so pervasive and deception so artful that employees would have been unable to separate truth from untruth. *Van Dorn Plastic Machinery Co. v. NLRB*, 736 F.2d 343, 345 (6th Cir. 1984), cert. denied 469 U.S. 1208 (1985). As such, the Employer has failed to establish that a hearing is warranted. Accordingly, I recommend overruling Objection 3.[4]

OBJECTION 4:

> Agents, employees and representatives of the Petitioner, SEIU/1199, disseminated materials evidencing employee voting sentiments without proper consent.

In support of Objection 4, the Employer asserts, on information and belief, that eligible voters who signed the "petition" did not sign any consent forms from Petitioner disclosing its intended use of the employee signatures. "Without having obtained the necessary consent forms, the promulgation of the petition disclosing the alleged support of many bargaining unit members served to coerce these employees (and others so included thereon) in their vote and should serve as the basis for a re-run election or, in the alternative, the scheduling of a hearing on the Employer's election objections." Though the Employer submitted no witness statements or other evidence to support its assertion, it suggested contacting Union organizer Vanessa Bliss, who can confirm the Employer's assertions.

[4] Although Petitioner's evidence is compelling, I make this recommendation based on the Employer's failure to submit any evidence to substantiate its claims that there were any material factual misrepresentations, or that the document as a whole creates a false showing of support for Petitioner.

Petitioner denies that its conduct was objectionable. Further, Petitioner relies on the statement of Vanessa Bliss, who attested she took various measures to ensure employees were aware that their names would be publicized. Petitioner also argues that the document circulated among employees, bearing the caption "PUBLIC PETITION," left little room for misunderstanding that employees' names and signatures would remain private.

The Employer submitted no evidence to show the employees' signatures were included on the "petition" without their consent. Neither was it claimed or shown that employees had been assured their names and signatures would remain confidential.[5] And as I have already determined in connection with Objections 1 and 2, the petition itself is evidence that it did not have a coercive effect, as not everyone who signed it was compelled to vote "yes" in the election. Accordingly, in the absence of evidence to show a hearing on this issue is warranted, I recommend overruling Objection 4.[6]

OBJECTION 5:

> Other conduct upon which evidence is submitted by the Employer or which is discovered during the course of the Region's investigation of these objections which served to undermine the laboratory conditions surrounding the election.

No other conduct or evidence was submitted or adduced in the course of the investigation of these objections. Accordingly, I recommend overruling Objection 5.

[5] Compare *Gormac Custom Mfg.*, 335 NLRB 1192 (2001), in which a hearing was directed where the objecting party submitted three employee affidavits. The employees stated they were told at the time they signed the document that their signatures would be confidential and the document would only be used to obtain a representation election.

[6] In making this recommendation, I rely not on the Vanessa Bliss statement submitted by Petitioner, but on the Employer's failure to meet its burden to provide supporting evidence.

SUMMARY

In summary, I recommend overruling Employer's Objections 1 through 5, which disposes of Employer's objections in their entirety. Accordingly, I further recommend that the appropriate Certification of Representative issue.

Dated at Baltimore, Maryland this 8th day of February 2006.

(SEAL) /s/WAYNE R. GOLD

Wayne R. Gold, Regional Director
National Labor Relations Board, Region 5
103 South Gay Street
Baltimore, Maryland 21202

Under the provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this Report, if filed, must be filed with the Board in Washington, D.C. Under the provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of objections and which are not included in the Report, are not a part of the record before the Board unless appended to the exceptions or opposition thereto which the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Report shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding. Exceptions must be received by the Board in Washington by February 22, 2006.